

Memorandum 94-38

Administrative Adjudication: Exemption Request of Department of Health Services

At the February meeting, the Commission began to consider the exemption request of the Department of Health Services. DHS identified 37 kinds of non-Administrative Procedure Act hearings under its jurisdiction that use their own procedures. DHS says its procedures are speedy and simple, and are especially useful for non-adversarial proceedings.

DHS did not ask for a blanket exemption from the APA, but asked that many of its non-APA hearings remain exempt. The staff recommended some of these remain exempt and others be made subject to the APA. The Commission decided to apply the draft statute to all required hearings in the absence of a compelling reason not to do so, and asked the staff to bring back a revised memo consistent with this policy.

The attached Exhibit does not exempt any DHS hearings from the APA, except for the optional hearing under Health and Safety Code Section 14300 to which the draft statute would not apply in any event. Thus all DHS hearings will be subject to the APA, except those to which the draft statute by its terms does not apply — informal factfinding or investigative hearings, optional hearings not required by constitution or statute, hearings held by agreement, and Skelly hearings.

DHS Hearings to be Subject to the APA

Special hearing procedure for currently required non-APA hearings. It should not be unduly burdensome to DHS to subject all required non-APA hearings to the restructured statute. The most important feature of the restructured statute is the special hearing procedure, which may be adopted by regulation for all hearings not required by statute to be conducted by an administrative law judge of the Office of Administrative Hearings. All hearings for which DHS requested an exemption are in this category and therefore eligible for the special hearing procedure. The special hearing procedure may be tailored by the agency to meet its needs, except that it must satisfy the eight key due process and public policy requirements: freedom of the presiding officer from

bias, internal separation of function, public hearings, language assistance, right to present and rebut evidence, restriction of ex parte communication with the presiding officer, written decision based on the record, and designation and indexing of significant decisions as precedent. DHS may rely on its existing regulations if it adopts a new regulation that either identifies the existing regulations or incorporates formal hearing provisions that satisfy the key due process requirements. The new regulation will not require OAL review.

DHS hearings to be conducted under the special hearing procedure are the following: hearing on adverse action against a civil service employee (Gov't Code §§ 19571-19589), hearings on a petition to set aside a resignation from civil service on the ground of mistake, fraud, duress, or undue influence (*id.* §19996.1), hearing for temporary exemption of a public water system from water quality standards (Health & Safety Code § 4027), hearing on variance for a public water system from drinking water standards to permit higher levels of fluoride concentration (*id.* § 4027.6), hearing on granting or amending a license to handle radioactive materials or determining compliance with or granting exceptions to department regulations on handling of radioactive materials (*id.* § 25845(a), hearing on exceeding prescribed maximums for lead and cadmium content of glazed ceramic tableware (*id.* 25893), hearing for premarketing review of a new drug (*id.* §§ 26671-26672, 26675), hearing on denial of annual license for food canning (*id.* § 28411.5), hearing on individual violations of the provisions prohibiting taking contaminated shellfish (*id.* §§ 28518.8, 28550), administrative appeal for disputes under direct service contracts between a nonprofit human service agency and the Health and Welfare Agency (*id.* § 38060 — formal or other hearing procedure as determined by OAH), hearing for a dissatisfied applicant for public social services (Welf. & Inst. Code §§ 10950-10967), administrative review of disputes about performance under contracts between the state and hospitals for inpatient services to Medi-Cal patients (*id.* § 14087.27), hearing for public comment on removing a drug from the Medi-Cal list of approved drugs (*id.* § 14105.38), administrative appeal for errors, omissions, or audit disallowances in Medi-Cal adjustment payments to hospitals for acute care (*id.* § 14105.98), administrative appeal of penalty for false or illegal claim for Medi-Cal payment (*id.* § 14123.2), administrative appeal of department financial audit of a health care facility under Medi-Cal (*id.* § 14126.50), administrative review of settlements based on findings of an audit or examination of a Medi-Cal provider (*id.* § 14171), hearings on DHS notice of intent to contract with a prepaid health

plan (*id.* § 14300), and disputes between a prepaid health plan and non-prepaid health plan provider (*id.* § 14454). With four exceptions, no conforming revisions are needed in these sections because hearings need not be conducted by an ALJ from OAH unless a statute so requires. See Sections 633.010-633.020. (The exceptions are Welfare and Institutions Code Sections 10953, 14087.27, 14300, and 14454.)

Formal or informal APA hearing for currently required APA hearings. Many DHS hearings are now subject to the APA. For these, the attached Exhibit corrects the references to the APA in Health and Safety Code Sections 436.57, 530, 1016, 1027, 1219, 1220, 1241, 1269, 1295, 1317.4, 1337.8, 1339.7, 1437, 1526, 1551, 1569.22, 1569.51, 1575.3, 1576.5, 1590.5, 1596.879, 1596.887, 1615, 1618, 1668, 1720, 1728.2, 1736, 25079, 25099.2, 25149, 25186.1, 25187, 25226, 25359.3 (renumbered as Section 25359.35), 25629, 25690, 25845(b), 25847, 26582, 26691, 28317, 28418, 28479, and 28721, and Welfare and Institutions Code Sections 14123 and 14304.

DHS Hearings to Which the APA Will Not Apply

Informal factfinding or investigative hearings. The draft statute does not apply to these (Section 631.030): investigative hearing by a department head (Gov't Code §§ 11180-11181), investigation with or without a hearing on rejection of a probationary employee (*id.* § 19175), establishment and review of affirmative action programs for hiring the disabled (*id.* §§ 19230-19237), a bid protest on a public contract (hearing not required by statute — Pub. Cont. Code § 10345), informal committee hearing on a complaint against a registered environmental health specialist if suspension or revocation is not recommended (Health & Safety Code § 530), and informal review conference of a citation to a licensee of a long-term health care facility (*id.* § 1428).

Optional hearings, not required by statute or constitution. The draft statute does not apply to these (Section 631.010): determining whether domestic water quality satisfies departmental standards (Health & Safety Code § 4027), closing areas to taking shellfish unsafe or unfit for human consumption (*id.* § 28502), and hearings on non-renewal of a contract with a prepaid health plan (*id.* § 14450). The Exhibit includes an express exemption in Welfare and Institutions Code Section because the section is somewhat ambiguous.

Hearings held by agreement. The department is concerned the new APA might apply to a hearing not required by statute that is held by agreement with the appealing party or in other situations where a hearing is in the public

interest. With the modest revision shown below, proposed Section 631.030 will address this fully:

631.030. (a) An agency may provide any appropriate procedure for a decision that is not required to be conducted under this division.

(b)

(c) An agency may formulate and issue a decision by settlement , or pursuant to an agreement of the parties, without conducting a proceeding under this division.

Skelly hearings. As decided by the Commission, the draft statute will not apply to interim or preliminary actions pending a hearing on a disciplinary sanction ("Skelly hearings"). See the Comment to Section 631.010.

Respectfully submitted,

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Exhibit

**CONFORMING REVISIONS AFFECTING DEPARTMENT OF HEALTH
SERVICES**

Health & Safety Code § 319 (amended). Hearing procedure to appeal adverse actions

319. The department shall provide a *special hearing procedure in accordance with Chapter 3 (commencing with Section 633.010) of Part 3 of Division 3.3 of Title 1 of the Government Code* whereby any food vendor or local agency may appeal an adverse action taken by the state department affecting the vendor's or local agency's participation in the California Supplemental Food Program for Women, Infants, and Children. The *special hearing procedure* shall be in accordance with the requirements of the federal regulations for the Special Supplemental Food Program for Women, Infants, and Children, which is provided for in Section 246 and following of Title 7 of the Code of Federal Regulations.

Comment. Section 319 is amended to require the Department of Health Services to provide a special hearing procedure under the Administrative Procedure Act. See Gov't Code §§ 633.010-633.050.

Health & Safety Code § 436.57 (technical amendment). Suspension, revocation or refusal to issue license

436.57. Any license issued pursuant to Section 436.53 may be suspended or revoked by the State Director of Health Services for any of the reasons set forth in Section 436.59. The director may refuse to issue a license to any applicant for any of the reasons set forth in Section 436.58. The proceedings under this part shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1 of the Government Code*, and the director shall have the powers and duties granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 436.57 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 530 (technical amendment). Suspension, denial, refusal to renew, or revocation of registration; proceedings

530. (a) Notwithstanding any other provisions of this article, the department upon the recommendation of the committee may suspend, deny, refuse to renew,

or revoke a registration certificate issued under the provisions of this article after sufficient notice and an opportunity for a hearing and upon findings that the registered environmental health specialist has:

(1) Knowingly made a false statement of fact required to be revealed in the application for registration.

(2) Been convicted of a crime, if the crime is related to the qualifications, functions, and duties of an environmental health specialist.

(3) Knowingly made a false statement of fact required to be revealed in an application for, or renewal of, registration.

(4) Committed an act of deceit, misrepresentation, violation of contract, fraud, negligence, professional incompetence, or unethical practice.

(b) The procedure to deny, suspend, refuse to renew, or revoke an environmental health specialist registration certificate pursuant to this section shall be as follows:

(1) All cases, complaints, or allegations charging a violation of this subdivision shall be made in writing and submitted to the department.

(2) The department shall make a preliminary investigation by:

(A) Obtaining copies of all pertinent written documents (laws, reports, contacts, and correspondence).

(B) Interviewing, in person or by telephone, of all individuals involved with the issue.

(3) The department shall compile the information into a confidential case document which includes:

(A) A description of the complaint.

(B) A chronology of events.

(C) Results of the interviews.

(D) Copies of the written documents.

(4) The case document shall be submitted to each member of the committee requesting their recommendation whether or not the information warrants further investigation and an informal hearing.

(5) The department shall review committee recommendations and the preliminary investigation findings and then decide whether to dismiss the complaint or proceed to an informal committee hearing. Dismissal of the charges shall be followed by a letter to both complainant and the registered environmental health specialist involved explaining the department's action.

(6) If the decision is made to proceed with an informal hearing, the department shall request the committee to appoint one or more hearing officers to hear the case.

(A) All parties shall be notified of the time and place of the hearing.

(B) An investigation of the issue may be made by an independent professional investigator if it is felt warranted by the department and the committee. The investigation results shall be submitted to the department, committee hearing officers, complainant, and respondent prior to the hearing.

(C) The informal hearing shall permit the right to be heard (with an attorney, if desired) and the proceedings recorded.

(D) Upon the finding that a violation of this section occurred, the following disciplinary ranges may be recommended to the department by committee:

(i) Knowingly made a false statement of fact required to be revealed in the application for registration.

(I) Maximum: Revocation.

(II) Minimum: Fifteen-day suspension. Range depends on whether or not the registration was falsely approved.

(ii) Been convicted of a crime, if the crime is related to the qualifications, functions, and duties of a registered environmental health specialist.

(I) Maximum: Deny, refuse to renew, or revocation of registration.

(II) Minimum: Ninety days actual suspension.

(iii) Knowingly made a false statement of fact required to be revealed in an application for, or renewal of registration.

(I) Maximum: Revocation.

(II) Minimum: Seven day actual suspension.

(iv) Committed an act of deceit, misrepresentation, violation of contract, fraud, negligence, professional incompetence, or unethical practice.

(I) Maximum: Revocation.

(II) Minimum: Ninety days suspension stayed for three years on the following conditions of probation.

—Forty-five days actual suspension.

—The respondent shall obey all laws and regulations related to the practice of environmental health.

(c) Department action to implement denial, suspension, refusal to renew, or revocation of registration under this chapter shall be in accordance with ~~the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all the powers granted by those provisions. In the event of conflict between those provisions of the Government Code and the provisions of this article, the provisions of the Government Code shall prevail. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 530 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1016 (technical amendment). Notification of denial or revocation; hearing

1016. Upon denial of any application for a certificate, or revocation of a certificate, the state department shall immediately notify the applicant by certified mail, return receipt requested, of the denial and the reasons for the denial. Within

20 days of receipt, the applicant may present the state department with a written petition for a hearing. Upon receipt in proper form by the state department, the petition shall be set for hearing. The proceedings shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department has all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1016 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1027 (technical amendment). Conduct of proceedings

1027. Proceedings for the suspension or revocation of a certificate under this chapter shall be conducted in accordance with ~~the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1027 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1219 (technical amendment). Provisional license

1219. (a) If a clinic or an applicant for a license has not been previously licensed, the state department may only issue a provisional license to the clinic as provided in this section.

(b) A provisional license to operate a clinic shall terminate six months from the date of issuance.

(c) Within 30 days prior to the termination of a provisional license, the state department shall give the clinic a full and complete inspection, and, if the clinic meets all applicable requirements for licensure, a regular license shall be issued. If the clinic does not meet the requirements for licensure but has made substantial progress towards meeting such requirements, as determined by the state department, the initial provisional license shall be renewed for six months.

(d) If the state department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the state department determines upon its inspection made within 30 days of the termination of a renewed provisional license that there is a lack of full compliance with such requirements, no further license shall be issued.

(e) If an applicant for a provisional license to operate a clinic has been denied by the state department, the applicant may contest the denial by filing ~~a statement of issues, an application for an agency decision~~ as provided in Section ~~11504 642.230~~ of the Government Code. The proceedings to review the denial shall be conducted pursuant to ~~the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code by an administrative law judge employed by the Office of Administrative Hearings.

Comment. Section 1219 is amended to correct references to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1220 (technical amendment). Notice and hearing requirements on denial of license; temporary license

1220. Immediately upon the denial of any application for a license or special permit or a renewal thereof, the state department shall notify the applicant in writing. Within 15 days after the state department mails the notice, the applicant may present his written petition for a hearing to the state department. Upon receipt by the state department of the petition in proper form, such petition shall be set for hearing. The proceedings shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department has all powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

The director may issue a temporary license to operate a community clinic or free clinic when the director determines that the facility is in compliance with the provisions of this chapter, except that the facility has applied for but not yet been granted an exemption from federal taxation as required by subdivision (a) of Section 1204. In such cases, the prospective licensee shall submit to the director a copy of its application for exemption from federal taxation which it has sent to the federal Internal Revenue Service. The director shall request the Franchise Tax Board to review the application and to render an opinion regarding whether it is likely that the exemption will be granted. If the Franchise Tax Board so determines, the director may proceed to issue a temporary license. Such temporary license shall expire 12 months from the date of its issuance or upon the facility being granted such exemption from federal taxation. The director shall issue no more than three successive temporary licenses to one facility.

Comment. Section 1220 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1241 (technical amendment). Conduct of proceedings

1241. Proceedings for the suspension, revocation, or denial of licenses or special permits under this chapter shall be conducted in accordance with ~~the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department shall have all the powers granted by such provisions. In the event of conflict between the provisions of this chapter and such provisions of the Government Code, the provisions of the Government Code shall prevail. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1241 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1269 (technical amendment). Notice of denial of application; petition for hearing; conduct of proceedings

1269. Immediately upon the denial of any application for a license or for a special permit for special services, the state department shall notify the applicant in writing. Within 20 days after the state department mails the notice, the applicant may present his written petition for a hearing to the state department. Upon receipt by the state department of the petition in proper form, such petition shall be set for hearing. The proceedings shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department has all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1269 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1295 (technical amendment). Conduct of proceedings

1295. Proceedings for the suspension, revocation, or denial of licenses or special permits under this chapter shall be conducted in accordance with ~~the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department shall have all the powers granted by such provisions. In the event of conflict between the provisions of this chapter and such provisions of the Government Code, the provisions of the Government Code shall prevail. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1295 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative

law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1317.4 (technical amendment). Records of transfers; reports of violations; enforcement

1317.4. (a) All hospitals shall maintain records of each transfer made or received, including the "Memorandum of Transfer" described in subdivision (f) of Section 1317.2, for a period of three years.

(b) All hospitals making or receiving transfers shall file with the state department annual reports on forms prescribed by the department which shall describe the aggregate number of transfers made and received according to the person's insurance status and reasons for transfers.

(c) The receiving hospital, and all physicians, other licensed emergency room health personnel, and certified prehospital emergency personnel at the receiving hospital who know of apparent violations of this article or the regulations adopted hereunder shall, and the corresponding personnel at the transferring hospital and the transferring hospital may, report the apparent violations to the state department on a form prescribed by the state department within one week following its occurrence. The state department shall promptly send a copy of the form to the hospital administrator and appropriate medical staff committee of the transferring hospital and the local emergency medical services agency, unless the state department concludes that the complaint does not allege facts requiring further investigation, or is otherwise unmeritorious, or the state department concludes, based upon the circumstances of the case, that its investigation of the allegations would be impeded by disclosure of the form. When two or more persons required to report jointly have knowledge of an apparent violation, a single report may be made by a member of the team selected by mutual agreement in accordance with hospital protocols. Any individual, required to report by this section, who disagrees with the proposed joint report has a right and duty to separately report.

A failure to report under this subdivision shall not constitute a violation within the meaning of Section 1290 or 1317.6.

(d) No hospital, government agency, or person shall retaliate against, penalize, institute a civil action against, or recover monetary relief from, or otherwise cause any injury to a physician or other personnel for reporting in good faith an apparent violation of this article or the regulations adopted hereunder to the state department, hospital, medical staff, or any other interested party or government agency.

(e) No hospital, government agency, or person shall retaliate against, penalize, institute a civil action against, or recover monetary relief from, or otherwise cause any injury to a physician who refused to transfer a patient when the physician determines, within reasonable medical probability, that the transfer or delay caused by the transfer will create a medical hazard to the person.

(f) Any person who violates subdivision (d) or (e) of Section 1317.4 is subject to a civil money penalty of no more than ten thousand dollars (\$10,000) per

violation. The remedy specified in this section shall be in addition to any other remedy provided by law.

(g) The state department shall on an annual basis publish and provide to the Legislature a statistical summary by county on the extent of economic transfers of emergency patients, the frequency of medically hazardous transfers, the insurance status of the patient populations being transferred and all violations finally determined by the state department describing the nature of the violations, hospitals involved, and the action taken by the state department in response. These summaries shall not reveal the identity of individual persons transferred.

(h) Proceedings by the state department to impose a fine under Section 1317.3 or 1317.6, and proceedings by the board to impose a fine under Section 1317.6, shall be conducted as follows:

(1) If a hospital desires to contest a proposed fine, the hospital shall within 15 business days after service of the notice of proposed fine notify the director in writing of its intention to contest the proposed fine. If requested by the hospital, the director or the director's designee, shall hold, within 30 business days, an informal conference, at the conclusion of which he or she may affirm, modify, or dismiss the proposed fine. If the director or the director's designee affirms, modifies, or dismisses the proposed fine, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to the hospital. If the hospital desires to contest a determination made after the informal conference, the hospital shall inform the director in writing within 15 business days after it receives the decision by the director or director's designee. The hospital shall not be required to request an informal conference to contest a proposed fine, as specified in this section. If the hospital fails to notify the director in writing that it intends to protest the proposed fine within the times specified in this subdivision, the proposed fine shall be deemed a final order of the state department and shall not be subject to further administrative review.

(2) If a hospital notifies the director that it intends to contest a proposed fine, the director shall immediately notify the Attorney General. Upon notification, the Attorney General shall promptly take all appropriate action to enforce the proposed fine in a court of competent jurisdiction for the county in which the hospital is located.

(3) A judicial action to enforce a proposed fine shall be filed by the Attorney General after a hospital notifies the director of its intent to contest the proposed fine. If a judicial proceeding is prosecuted under the provisions of this section, the state department shall have the burden of establishing by a preponderance of the evidence that the alleged facts supporting the proposed fine occurred, that the alleged facts constituted a violation for which a fine may be assessed under Section 1317.3, 1317.4, or 1317.6, and the proposed fine is appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of the proposed fine should be upheld. If a hospital timely notifies the state department of its decision to contest a proposed fine, the

fine shall not be due and payable unless and until the judicial proceeding is terminated in favor of the state department.

(4) Action brought under the provisions of this section shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing any such proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(5) If the proposed fine is dismissed or reduced, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the proposed fine was dismissed or reduced.

(6) In lieu of a judicial proceeding, the state department and the hospital may jointly elect to submit the matter to binding arbitration, in which case, the department shall initiate arbitration proceedings. The parties shall agree upon an arbitrator designated by the American Arbitration Association in accordance with the Association's established rules and procedures. The arbitration hearing shall be set within 45 days of the parties' joint election, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 days if necessary at the arbitrator's discretion. The decision of arbitrator shall be based upon substantive law and shall be binding on all parties, subject to judicial review. This review shall be limited to whether there was substantial evidence to support the decision of the arbitrator.

(7) Proceedings by the board to impose a fine under Section 1317.6 shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1 of the Government Code by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1317.4 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1337.8 (technical amendment). Discipline of certified nurse assistant; suspension or revocation of certificate

1337.8. (a) Every certified nurse assistant may be disciplined as provided in this article.

(b) The state department may discipline the holder of any certificate, whose default has been entered or who has been found by the state department to be guilty, by any of the following methods:

- (1) Suspending judgment.
- (2) Placing the holder's certificate on probation.
- (3) Suspending the right to practice as a certified nurse assistant for a period not exceeding one year.
- (4) Revoking the certificate.

(c) If a certificate is suspended, the holder shall not be entitled to practice as a certified nurse assistant during the term of suspension, and shall return his or her certificate to the state department.

Upon the expiration of the term of suspension, he or she shall be reinstated by the state department and shall be entitled to resume practice unless it is established to the satisfaction of the state department that the person has practiced as a certified nurse assistant in California during the term of suspension. In this event, the state department shall revoke the person's certificate.

(d) The state department may deny, suspend, or revoke a certificate issued under this article for any of the following:

(1) Unprofessional conduct, which includes incompetence or gross negligence in carrying out usual nursing functions.

(2) Procuring a certified nurse assistant certificate by fraud or misrepresentation, or mistake.

(3) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of, this article.

(4) Making or giving any false statement or information in conjunction with the application for issuance of a certified nurse assistant certificate.

(5) Conviction of a crime substantially related to the qualifications, functions, and duties of a certified nurse assistant, in which event the record of the conviction shall be conclusive evidence thereof.

(6) Impersonating any applicant, or acting as proxy for an applicant, in any examination required under this article for the issuance of a certificate.

(7) Impersonating another certified nurse assistant, a licensed vocational nurse, or a registered nurse, or permitting or allowing another person to use a certificate for the purpose of nursing the sick or afflicted.

(8) Aiding or assisting, or agreeing to aid or assist, any person or persons, whether a licensed physician or not, in the performance of, or arranging for, a violation of Article 12 (commencing with Section 2220) of Chapter 5.

(e) In addition to other acts constituting unprofessional conduct within the meaning of this article, it is unprofessional conduct for a person certified under this article to do any of the following:

(1) Conviction for, or use of, any narcotic drug, as defined in Division 10 (commencing with Section 11000), or any dangerous drug, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the certified nurse assistant, or any other person, or the public, to the extent that this use impairs the ability to conduct, with safety to the public, the practice authorized by a certificate.

(2) Abuse, whether verbal, physical, or mental, of a patient in a health care facility.

(f) A plea or verdict of guilty, or a conviction following a plea of nolo contendere, made to a charge substantially related to the qualifications, functions,

and duties of a certified nurse assistant shall be deemed a conviction within the meaning of this article. The state department may order the certificate suspended or revoked or may decline to issue a certificate when the time for appeal has elapsed, or the judgment or conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(g) The state department shall notify the certificate holder of his or her right to an appeal of the suspension or revocation of the certificate pursuant to ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code by an administrative law judge employed by the Office of Administrative Hearings.

Comment. Section 1337.8 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1339.7 (technical amendment). Administration of program

1339.7. The state department shall administer the program authorized in this article. In administering the program, the state department shall do all of the following:

(a) Verify hospital eligibility, pursuant to Section 1339.9, and designate those hospitals as primary health service hospitals.

(b) Establish criteria for the health service plans pursuant to Section 1339.15.

(c) Review a general acute care hospital's health service plan based upon recommendations of the local health systems agency, input from local public meetings, recommendations of the medical advisory panel, as appropriate, and the adequacy of the plan in meeting the criteria established pursuant to this section. The state department shall approve, deny, or defer the plan in whole or in part and shall notify the hospital of its findings, in writing, within 120 days after receipt of the plan. The plan shall be deemed approved if the hospital has not received notification from the state department within the 120-day period.

(d) Negotiate and grant exceptions to the licensure requirements for general acute care hospitals that are necessary to serve the purposes of this article when the granting of such exceptions do not jeopardize the health and welfare of the patients. Exceptions that are granted shall be consistent with the primary health service hospital's plan and any amendments thereto.

(e) Convene an advisory panel to review the medical-surgical and obstetrical services proposed as part of the primary hospital service plan and make recommendations to the state department on the medical appropriateness of those services according to the primary health service hospital's proposed plan. The panel shall include, but not be limited to, a rural hospital administrator, a rural

family practice physician and surgeon, a rural hospital nurse administrator, an internist, a primary care mid-level practitioner, and a physician and surgeon from a hospital which serves as a referral center for rural hospitals.

(f) Issue evidence of primary health service hospital designation and evidence of the number of acute care beds approved as swing beds pursuant to paragraph (4) of subdivision (b) of Section 1339.15.

(g) Monitor the performance of the primary health service hospital to assure compliance with such hospital's plan and licensure requirements from which such hospitals are not exempt.

(h) Immediately upon the denial of a primary health service hospital's health service plan, or a portion thereof, notify the hospital in writing. Within 20 days after the state department mails the notice, the hospital may present a written petition for a hearing to the state department. Upon receipt by the state department of the petition in proper form, the petition shall be set for hearing. The proceedings shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department has all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

(i) Compile and make available to health systems agencies and primary health service hospitals, information regarding state and federal funding programs for which the primary health service hospital may be eligible, the procedures necessary to apply for funding, and a description of how such requests may be incorporated into a primary health service hospital's plan and opportunities for diversification of services, the requirements and feasibility, and the procedures for development of such services.

(j) On behalf of primary health service hospitals, seek appropriate federal waivers consistent with the intent of this act.

(k) Contract with one or more health systems agencies to perform the functions specified in subdivision (c) of Section 1339.11.

(l) Develop or assist hospitals submitting a primary health service plan pursuant to Section 1339.15 to develop the following:

- (1) Alternative methods of filing claims which reduce administrative costs.
- (2) Alternative methods of Medi-Cal payment to hospitals.
- (3) Other methods of filing claims which reduce administrative costs.
- (4) Simplified and abbreviated procedures required by the department of Medi-Cal costs reports.

(5) An abbreviated medical and social review process and other control processes.

(m) Provide technical assistance to primary health service hospitals in development of their health service plan.

Comment. Section 1339.7 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative

law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1437 (technical amendment). Provisional license

1437. If a health facility, or an applicant for a license has not been previously licensed pursuant to Chapter 2 (commencing with Section 1250), the state department may only provisionally license the facility as provided in this section. A provisional license to operate a health facility shall terminate six months from the date of issuance. Within 30 days of the termination of a provisional license, the state department shall give the facility a full and complete inspection, and, if the facility meets all applicable requirements for licensure, a regular license shall be issued. If the health facility does not meet the requirements for licensure but has made substantial progress towards meeting the requirements, as determined by the state department, the initial provisional license shall be renewed for six months. If the state department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the state department determines upon its inspection made within 30 days of the termination of a renewed provisional license that there is lack of full compliance with the requirements, no further license shall be issued.

If an applicant for a provisional license to operate a health facility has been denied provisional licensing by the state department, he or she may contest the denial by filing ~~a statement of issues, an application for an agency decision~~ as provided in Section ~~11504~~ 642.230 of the Government Code, and the proceedings to review the denial shall be conducted ~~pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 in accordance with Division 3.3 (commencing with Section 600) of Title 1~~ of the Government Code by an administrative law judge employed by the Office of Administrative Hearings.

The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

General acute care hospitals and acute psychiatric hospitals are exempt from this section.

Comment. Section 1437 is amended to correct references to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1526 (technical amendment). Notice of denial of license or permit; hearing; conduct of proceedings

1526. Immediately upon the denial of any application for a license or for a special permit, the state department shall notify the applicant in writing. Within 15 days after the state department mails the notice, the applicant may present his written petition for a hearing to the state department. Upon receipt by the state department of the petition in proper form, such petition shall be set for hearing. The proceeding shall be conducted in accordance with ~~Chapter 5 (commencing~~

~~with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department has all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1526 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1551 (technical amendment). Proceedings for suspension, revocation, or denial of license, registration, or special permit

1551. (a) Proceedings for the suspension, revocation, or denial of a license, registration, or special permit under this chapter shall be conducted in accordance ~~with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department shall have all the powers granted by those provisions. In the event of conflict between the provisions of this chapter and the provisions of the Government Code, the provisions of the Government Code shall prevail. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

~~(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.~~

~~(c) (b) If the license is not temporarily suspended pursuant to Section 1550, the hearing shall be held within 90 calendar days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge pursuant to Section 642.420 of the Government Code. When the matter has been set for hearing only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing only upon finding the existence of one or more of the following:~~

~~(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of such person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.~~

~~(2) Lack of notice of hearing as provided in Section 11509 642.440 of the Government Code.~~

~~(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.~~

~~(4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is~~

~~communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.~~

~~(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.~~

~~(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.~~

~~(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.~~

~~(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.~~

Comment. Section 1551 is amended to correct references to the Administrative Procedure Act, to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings (see former Gov't Code §§ 11501-11502), and to delete obsolete provisions. Former subdivision (b) is superseded by Section 648.310(b) of the Government Code (burden of proof is clear and convincing proof unless agency by regulation provides a different burden). The former provisions concerning continuances are superseded by Section 642.420 of the Government Code (continuance may be granted by presiding officer for good cause).

Health & Safety Code § 1551.5 (technical amendment). Witness fees

~~1551.5. Notwithstanding Section 11510 of the Government Code, witnesses~~
Witnesses subpoenaed at the request of the department for a hearing conducted pursuant to this article who attend a hearing may be paid by the department witness fees and mileage as provided by Section 68093 645.440 of the Government Code. In addition, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

Comment. Section 1551.5 is amended to delete the introductory clause and to replace the former reference to Section 68093 of the Government Code with a reference to Section 645.440 (Administrative Procedure Act). This change is nonsubstantive because Section 645.440 allows the same mileage and fees for a witness as in a civil case. Mileage and fees for a witness in a civil case are provided by Section 68093.

Health & Safety Code § 1569.22 (technical amendment). Procedure on denial of license

1569.22. Immediately upon the denial of any application for a license, the department shall notify the applicant in writing. Within 15 days after the department mails the notice, the applicant may present his or her written petition for a hearing to the department. Upon receipt by the department of the petition in proper form, the petition shall be set for hearing. The proceedings shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1 of*

the Government Code, and the department has all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1569.22 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1569.51 (amended). Suspension or revocation of license

1569.51. (a) Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with ~~the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department shall have all the powers granted by these provisions. In the event of conflict between this chapter and those provisions of the Government Code, the provisions of the Government Code shall prevail. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

~~(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.~~

~~(c) (b) If the license is not temporarily suspended pursuant to Section 1569.50, the hearing shall be held within 90 days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge pursuant to Section 642.420 of the Government Code. When the matter has been set for hearing only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of one or more of the following:~~

~~(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of such person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.~~

~~(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.~~

~~(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.~~

~~(4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.~~

~~(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.~~

~~(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.~~

~~(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.~~

~~(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.~~

Comment. Section 1569.51 is amended to correct the reference to the Administrative Procedure Act, to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings (see former Gov't Code §§ 11501-11502), and to delete obsolete provisions. Former subdivision (b) is superseded by Section 648.310(b) of the Government Code (burden of proof is clear and convincing proof unless agency by regulation provides a different burden). The former provisions concerning continuances are superseded by Section 642.420 of the Government Code (continuance may be granted by presiding officer for good cause).

Health & Safety Code § 1575.3 (technical amendment). Provisional license; inspection

1575.3. (a) If a licensed adult day health center or an applicant for a license has not been previously licensed, the state department may only issue a provisional license to the center as provided in this section.

(b) A provisional license to operate an adult day health center shall terminate one year from the date of issuance.

(c) Within 30 days prior to the termination of a provisional license, the state department shall give the adult day health center a full and complete inspection, and, if the adult day health center meets all applicable requirements for licensure, a regular license shall be issued. If the adult day health center does not meet the requirements for licensure but has made substantial progress towards meeting the requirements, as determined by the state department, the initial provisional license shall be renewed for six months.

(d) If the state department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the state department determines upon its inspection made within 30 days prior to the termination of a renewed provisional license that there is lack of full compliance with the requirements, no further license shall be issued.

(e) If an applicant for a provisional license to operate an adult day health center has been denied by the state department, the applicant may contest the denial by filing a statement of issues, an application for an agency decision as provided in Section 11504 642.230 of the Government Code. The proceedings to review the denial shall be conducted pursuant to Chapter 5 (commencing with Section 11500)

~~of Part 1 of Division 3 of Title 2 in accordance with Division 3.3 (commencing with Section 600) of Title 1 of the Government Code by an administrative law judge employed by the Office of Administrative Hearings.~~

(f) The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

Comment. Section 1575.3 is amended to correct references to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1576.5 (technical amendment). Proceedings on denial of license

1576.5. Immediately upon the denial of any application for issuance or renewal of a license, the state department shall notify the applicant in writing. Not later than 10 days after the state department mails the notice, the applicant may submit a written petition for a hearing to the state department. Upon receipt by the state department of the petition in proper form, such petition shall be set for hearing. The hearing shall be held within 60 calendar days of receipt of the petition. The proceedings shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department has all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1576.5 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1590.5 (technical amendment). Conduct of proceedings

1590.5. Proceedings for the suspension, revocation, or denial of a license under this article shall be conducted in accordance with the provisions of ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department shall have all the powers granted by such provisions. Except as provided in Section 1591, in the event of conflict between the provisions of this chapter and such provisions of the Government Code, the provisions of the Government Code shall prevail. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1590.5 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1596.879 (technical amendment). Notice of denial of application; appeal

1596.879. Immediately upon the denial of any application for a license or for a special permit, the department shall notify the applicant in writing. Within 15 days after the department mails the notice, the applicant may present his or her written petition for a hearing to the department. Upon receipt by the department of the petition, the petition shall be set for hearing. The hearing shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department has all the powers granted in that chapter. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1596.879 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1596.887 (amended). Conduct of proceedings

1596.887. (a) Proceedings for the suspension, revocation, or denial of a license, registration, or special permit under this chapter shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all the powers granted by that chapter. In the event of conflict between the provisions of this chapter and those provisions of the Government Code, the provisions of the Government Code shall prevail. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

~~(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.~~

~~(c) If the license is not temporarily suspended pursuant to Section 1596.8865, the hearing shall be held within 90 days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of one or more of the following:~~

~~(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of such person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.~~

~~(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.~~

~~(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings~~

~~of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.~~

~~(4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.~~

~~(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.~~

~~(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.~~

~~(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.~~

~~(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.~~

Comment. Section 1596.887 is amended to correct the reference to the Administrative Procedure Act, to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings (see former Gov't Code §§ 11501-11502), and to delete obsolete provisions. Former subdivision (b) is superseded by Section 648.310(b) of the Government Code (burden of proof is clear and convincing proof unless agency by regulation provides a different burden). The former provisions concerning continuances are superseded by Section 642.420 of the Government Code (continuance may be granted by presiding officer for good cause).

Health & Safety Code § 1615 (technical amendment). Automatic revocation of license; new license

1615. (a) A license shall be automatically revoked when there is a change of address, ownership, or person in charge of biologics production. However, a new license may be secured for the new location, owner, or person in charge prior to the actual change, provided the contemplated change is in compliance with all the provisions of this chapter, and regulations pertaining thereto.

(b) Proceedings for denial of license shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 Division 3.3 (commencing with Section 600) of Title 1 of the Government Code by an administrative law judge employed by the Office of Administrative Hearings.~~

Comment. Section 1615 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1618 (technical amendment). Suspension, revocation, or denial of license

1618. (a) Licenses shall be suspended or revoked by the department for the violation of any provision of this chapter, or of any rule or regulation made by the department under authority conferred by this chapter. The proceedings shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

(b) Licenses may be denied for any reason applicable to revocation and suspension of licenses.

(c) District and city attorneys shall prosecute violations of this chapter upon evidence of violations within their respective jurisdictions submitted by the department.

Comment. Section 1618 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1668 (technical amendment). Investigations; suspension or revocation of certificate

1668. The board may, upon its own motion, and shall upon the verified complaint in writing of any person, investigate the actions of any person keeping or using animals for research or diagnostic purposes within this State, and it may temporarily suspend or permanently revoke a certificate of approval at any time where the holder of such a certificate, within the immediately preceding three years, while a holder of a certificate of approval, in performing or attempting to perform any of the acts within the scope of this chapter, has been guilty of the breach of any of the provisions of this chapter or of any reasonable rule or regulation adopted by the board for the purpose of carrying out the provisions of this chapter. The board may promulgate and adopt reasonable rules and regulations concerning the procedure for the drafting, filing and disposition of verified complaints of individuals. Procedure for revocation or suspension of approval shall be in accordance with ~~the provision of the Administrative Procedure Act, Division 3.3 (commencing with Section 600) of Title 1 of the Government Code, Title 2, Division 3, Part 1, Chapter 5,~~ and the department shall have all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1668 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1720 (technical amendment). Conduct of proceedings

1720. All hearings authorized by this chapter shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1 of the Government Code by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 1720 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1728.2 (technical amendment). Provisional license; inspection

1728.2. (a) If a home health agency or an applicant for a license has not been previously licensed, the state department may only issue a provisional license to the agency as provided in this section.

(b) A provisional license to operate a home health agency shall terminate six months from the date of issuance.

(c) Within 30 days prior to the termination of a provisional license, the state department shall give the agency a full and complete inspection, and, if the agency meets all applicable requirements for licensure, a regular license shall be issued. If the home health agency does not meet the requirements for licensure but has made substantial progress towards meeting the requirements, as determined by the state department, the initial provisional license shall be renewed for six months.

(d) If the state department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the state department determines upon its inspection made within 30 days of the termination of a renewed provisional license that there is lack of full compliance with the requirements, no further license shall be issued.

(e) If an applicant for a provisional license to operate a home health agency has been denied provisional licensing by the state department, the applicant may contest the denial by filing a statement of issues, as provided in Section 11504 of the Government Code, and the proceedings to review denial shall be conducted pursuant to ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *in accordance with Division 3.3 (commencing with Section 600) of Title 1 of the Government Code by an administrative law judge employed by the Office of Administrative Hearings.*

(f) The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

Comment. Section 1728.5 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1736 (technical amendment). Conduct of proceedings

1736. Proceedings for the denial, suspension or revocation of licenses or denial or withdrawal of approval under this chapter shall be conducted in accordance with ~~the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department shall have all the powers granted therein. In case of conflict between the provisions of this chapter and the provisions of ~~Chapter 5 (commencing with Section 11500) Division 3.3 (commencing with Section 600) of Title 1 of the Government Code~~, the latter provisions shall prevail. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

The suspension, expiration, or forfeiture by operation of law of a license issued by the state department, or its suspension, forfeiture, or cancellation by order of the state department or by order of a court of law, or its surrender without the written consent of the state department, shall not deprive the state department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

Comment. Section 1736 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 1737 (technical amendment). Reinstatement of license

1737. Any license revoked pursuant to this chapter may be reinstated pursuant to the provisions of ~~Section 11522 494.5 of the Government Business and Professions Code~~.

Comment. Section 1737 is amended to correct the reference to the provisions for reinstatement of licenses.

Health & Safety Code § 25079 (technical amendment). Denial of permit; hearing

25079. An enforcement agency shall inform an applicant for a medical waste permit, in writing, upon the denial of any application for the permit. Within 20 days after the enforcement agency mails the notice, the applicant may present a written petition for a hearing to the enforcement agency. Upon receipt by the enforcement agency of the petition in proper form, the petition shall be set for hearing.

If the department is the enforcement agency, the proceedings shall commence with the filing of a ~~statement of issues~~ *notice of commencement of proceeding* and shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department has all the powers granted to a department in that ~~chapter~~ *division*. *The proceedings shall be*

conducted by an administrative law judge employed by the Office of Administrative Hearings.

If the department is not the enforcement agency, the hearings shall be held in accordance with the ordinance adopting the medical waste management program.

Comment. Section 25079 is amended to correct the reference to the Administrative Procedure Act, to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings (see former Gov't Code §§ 11501-11502), and to substitute "notice of commencement of proceeding" for "statement of issues." See Gov't Code § 642.310 (proceeding commenced by issuance of notice of commencement of proceeding).

Health & Safety Code § 25099.2 (technical amendment). Conduct of proceedings

25099.2. Proceedings conducted by the department for the suspension or revocation of a medical waste permit shall commence with the filing of any accusation and shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all the powers granted to a department in that ~~chapter~~ *division*. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 25099.2 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 25149 (technical amendment). Endangerment to health and environment

25149. (a) Notwithstanding any other provision of law, except as provided in Section 25149.5 or 25181 of this code or Section 731 of the Code of Civil Procedure, no city or county, whether chartered or general law, or district may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment, or recovery of resources from hazardous waste or a mix of hazardous and solid wastes at that facility, unless, after public notice and hearing, the director determines that the operation of the facility may present an imminent and substantial endangerment to health and the environment. However, nothing in this section authorizes an operator of that facility to violate any term or condition of a local land use permit or any other provision of law not in conflict with this section.

(b) The director shall, pursuant to subdivision (c), conduct the hearing specified in subdivision (a) to determine whether the operation of an existing hazardous waste facility may present an imminent and substantial endangerment to health and the environment whenever any of the following occurs:

(1) A state or federal public agency requires any person to evacuate a residence or requires the evacuation of a school, place of employment, commercial

establishment, or other facility to which the public has access, because of the release of a hazardous substance from the facility.

(2) For more than five days in any month, the air emissions from the facility result in the violation of an emission standard for a hazardous air pollutant established pursuant to Section 7412 of Title 42 of the United States Code or the threshold exposure level for a toxic air contaminant, as defined in Section 39655.

(3) A state or federal public agency requires that the use of a source of drinking water be discontinued because of the contamination of the source by a release of hazardous waste, hazardous substances, or leachate from the facility.

(4) A state agency, or the board of supervisors of the county in which the facility is located, upon recommendation of its local health officer, makes a finding that the public health has been affected by a release of hazardous wastes from the facility. The finding shall be based on statistically significant data developed in a health effects study conducted according to a study design, and using a methodology, which are developed after considering the suggestions on study design and methodology made by interested parties and which are approved by the Epidemiological Studies Section in the Epidemiology and Toxicology Branch of the State Department of Health Services before beginning the study.

(5) The owner or operator of the facility is in violation of an order issued pursuant to Section 25187 which requires one or both of the following:

(A) The correction of a violation or condition that has resulted, or threatens to result, in an unauthorized release of hazardous waste or a constituent of hazardous waste from the facility into either the onsite or offsite environment.

(B) The cleanup of a release of hazardous waste or a constituent of hazardous waste, the abatement of the effects of the release, and any other necessary remedial action.

(6) The facility is in violation of an order issued pursuant to Article 1 (commencing with Section 13300) of, or Article 2 (commencing with Section 13320) of, Chapter 5 of Division 7 of the Water Code or in violation of a temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to Article 4 (commencing with Section 13340) of Chapter 5 of Division 7 of the Water Code.

(c) Whenever the director determines that a hearing is required, as specified in subdivision (b), the director shall immediately request the Office of Administrative Hearings to assign ~~a hearing officer~~ *an administrative law judge* to conduct the hearing, pursuant to this subdivision.

(1) After ~~a hearing officer~~ *an administrative law judge* is assigned by the Office of Administrative Hearings, the director shall transmit to the ~~hearing officer~~ *administrative law judge* and to the operator of the existing hazardous waste facility, all relevant documents, information, and data that were the basis for the director's determination. The director shall also prepare a notice specifying the time and place of the hearing. The notice shall also include a clear statement of the reasons for conducting the hearing, a description of the facts, data, circumstances,

or occurrences that are the cause for conducting the hearing, and the issues to be addressed at the hearing. The hearing shall be held as close to the location of the existing hazardous waste facility as is practicable and shall commence no later than 30 days following the director's request to the Office of Administrative Hearings to assign a hearing officer *an administrative law judge* to the case.

(2) The hearing specified in paragraph (1) shall be conducted in accordance with ~~Sections 11510 to 11515, inclusive, and Section 11525, Division 3.3 (commencing with Section 600) of Title 1 of the Government Code by the administrative law judge employed by the Office of Administrative Hearings.~~ *The hearing officer's proposed decision shall be transmitted to the director within 30 days after the case is submitted.*

(3) ~~The director may adopt the proposed decision of the hearing officer in its entirety or may decide the case upon the record, as provided in Section 11517 of the Government Code. The director's decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision is subject to judicial review in accordance with Section 11523 of the Government Code.~~

Comment. Section 25149 is amended to correct references to the Administrative Procedure Act, to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings (see former Gov't Code §§ 11501-11502), and to delete obsolete provisions. The former second sentence of subdivision (c)(2) is superseded by Section 649.110. The first sentence of former subdivision (c)(3) is superseded by Sections 649.140 and 649.230 of the Government Code. The second sentence of former subdivision (c)(3) is superseded by Section 649.120 of the Government Code. The third sentence of former subdivision (c)(3) is continued in substance in Section 660 of the Government Code.

Health & Safety Code § 25186.1 (technical amendment). Conduct of proceedings

25186.1. Except as specified in Section 25186.2, proceedings for the denial, suspension or revocation of a permit, registration or certificate under this chapter shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all the powers granted by those provisions. In the event of a conflict between this chapter and the provisions of ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of Government Code, the provisions of the Government Code shall prevail. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 25186.1 is amended to correct references to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 25187 (technical amendment). Schedule for compliance

25187. (a) Whenever the department, a local health officer authorized pursuant to Section 25187.7, or a local public officer designated by the director pursuant to

subdivision (a) of Section 25180 and authorized pursuant to Section 25187.7 determines that any person has violated, is in violation of, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code to violate, this chapter, Chapter 6.8 (commencing with Section 25300), or Article 3 (commencing with Section 25810) of Chapter 7.6, of this division, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, Chapter 6.8 (commencing with Section 25300), or Article 3 (commencing with Section 25810) of Chapter 7.6, of this division, or the department, an authorized local health officer, or an authorized local public officer determines that there is or has been a release, as defined in Chapter 6.8 (commencing with Section 25300), of hazardous waste or constituents into the environment from a hazardous waste facility, the department, authorized local health officer, or authorized local public officer may issue an order specifying a schedule for compliance or correction and imposing an administrative penalty for any violation of this chapter or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter.

(1) An order issued pursuant to this section shall include a requirement that the person take corrective action with respect to hazardous waste, including the cleanup of the hazardous waste, abatement of the effects thereof, and any other necessary remedial action. An order issued pursuant to this section which requires corrective action at a hazardous waste facility shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment. The order shall incorporate as a condition of the order any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the issuance of the order, to the extent that the department, authorized local health officer, or authorized local public officer determines that those plans and policies are not less stringent than this chapter and regulations adopted pursuant to this chapter. The department, authorized local health officer, or authorized local public officer may also include any more stringent requirement which the department, authorized local health officer, or authorized local public officer determines is necessary or appropriate to protect water quality. Persons who are subject to an order pursuant to this section include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(2) In an order proposing a penalty pursuant to this section the department shall take into consideration the nature, circumstances, extent, and gravity of the

violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

(b) For purposes of subdivision (a), "hazardous waste facility" includes the entire site that is under the control of an owner or operator engaged in the management of hazardous waste.

(c) Any order issued pursuant to subdivision (a) shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing.

(d)(1) Any person served with an order pursuant to subdivision (c) who has been unable to resolve any violation or deficiency on an informal basis with the department, authorized local health officer, or authorized local public officer may, within 15 days after service of the order, request a hearing by filing with the department, authorized local health officer, or authorized local public officer a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(2) If a person served with an order pursuant to subdivision (c) chooses to resolve the content, terms or conditions of the order directly with the department, authorized local health officer, or authorized local public officer and does not file an administrative or judicial appeal, the person may request, and the department, authorized local health officer, or authorized local public officer shall prepare, a written statement, which the department, authorized local health officer, or authorized local public officer shall amend into the order, which explains the violation and the penalties applied, including the nature, extent, and gravity of the violations and a brief description of any mitigating circumstances and any explanations by the respondent. Any amendment to include the written statement prepared pursuant to this subdivision does not constitute a new order and does not create new appeal rights.

(e) Except as provided in subdivision (f), any hearing requested under subdivision (d) shall be conducted within 90 days after receipt of the notice of defense by an administrative law judge of the Office of Administrative Hearings of the Department of General Services in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all the authority granted to an agency by those provisions.

(f) Any provision of an order issued under subdivision (a), except the imposition of an administrative penalty, shall take effect upon issuance by the department if the department finds that the violation or violations of law associated with that

provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a decision by the department under subdivision (e). However, in the event that the department determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the department. A request for a hearing shall not stay the effect of the order as a whole pending a decision by the hearing officer under subdivision (e). Any order issued after a hearing requested under subdivision (d) shall take effect upon issuance by the department.

(g) A decision issued pursuant to this section may be reviewed by the court pursuant to Section 11523 660 of the Government Code. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the department if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) Except as otherwise provided in subdivisions (i) and (j), all administrative penalties collected under this section shall be placed in a separate subaccount in the Hazardous Waste Control Account and shall be available for expenditure by the department only upon appropriation by the Legislature.

(i) Fifty percent of the penalties collected from actions brought by local health officers or designated local public officers pursuant to this section shall be paid to the city or county whose local health officer or designated local public officer imposed the penalty and shall be deposited into a special account which may be expended to fund the activities of the local health officer or designated local public officer in enforcing this chapter pursuant to Section 25180, after the director determines that the local agency enforcement of this section is fair and reasonable.

(j) Fifty percent of the penalties collected from actions brought by local health officers or designated local public officers pursuant to this section shall be paid to the department and deposited in the Hazardous Waste Control Account for expenditure by the department, upon appropriation by the Legislature, in connection with activities of local health officers or designated local public officers.

Comment. Section 25187 is amended to correct references to the Administrative Procedure Act.

Health & Safety Code § 25226 (amended). Conduct of proceedings

25226. The persons served shall have the right to file a response to the notice and to appear in person or otherwise and give testimony at the place and time fixed in the notice. At the discretion of the director, agent, or agency conducting the

hearing, any interested person may be allowed to intervene in the proceeding and to present testimony. Any such proceeding shall ~~, so far as practicable,~~ be conducted pursuant to the provisions of ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code by an administrative law judge employed by the Office of Administrative Hearings. ~~All proceedings shall be appropriately reported, and the testimony taken shall be reduced to writing and filed with the director. Thereafter, at his or her discretion, the director, upon notice, may take further testimony or hear argument.~~

Comment. Section 25226 is amended to correct the reference to the Administrative Procedure Act, to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings (see former Gov't Code §§ 11501-11502), to delete the "so far as practicable" limitation, and to delete the last two sentences. The penultimate sentence is superseded by Section 648.160 of the Government Code (report of proceedings). The last sentence is superseded by Section 649.230 of the Government Code (review procedure).

Health & Safety Code § 25359.3 (technical amendment). Administrative proceedings

~~25359.3~~ 25359.35. (a) The department may issue a complaint to any person subject to a penalty pursuant to Sections 25359.2 and 25359.4. The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed penalty. The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing. Any person served with a complaint pursuant to this subdivision may, within 45 days after service of the complaint, request a hearing by filing a notice of defense with the department. A notice of defense is deemed to be filed within a 45-day period if it is postmarked within the 45-day period. If no notice of defense is filed within 45 days after service of the complaint, the department shall issue an order setting liability in the amount proposed in the complaint, unless the department and the party have entered into a settlement agreement, in which case the department shall issue an order setting liability in the amount specified in the settlement agreement. Where the party has not filed a notice of defense or where the department and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(b) Any hearing required under this section shall be conducted in accordance with the Administrative Procedure Act (~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code) Code, and the department shall have all powers granted by those provisions. ~~The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.~~ In making a determination, the administrative law judge shall consider the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety or the environment, the violator's ability to pay the proposed penalty,

and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

(c) All penalties collected under this section and Section 25359.2 shall be deposited in the Hazardous Substance Account and shall be available for expenditure by the department upon appropriation by the Legislature.

Comment. Section 25359.3 is amended to renumber it as Section 25359.35, to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502. The renumbering is necessary because there is another Section 25359.3 in the Health and Safety Code.

Health & Safety Code § 25629 (technical amendment). Denial, revocation, or suspension

25629. The establishment of a person as competent to perform nuclear medicine technology may be denied, revoked, or suspended by the state department, for any of the following reasons:

(a) Habitual intemperance in the use of any alcoholic beverages, narcotics, or stimulants to such an extent as to incapacitate for the performance of professional duties.

(b) Incompetence or negligence in performing nuclear medicine technology functions.

(c) Establishment of competence to perform nuclear medicine technology by fraud, or misrepresentation, or because of mistake.

(d) Use of a designation indicating that a person is established by the state department as competent to perform nuclear medicine technology by a person who has not been established by the state department as competent to perform nuclear medicine technology.

(e) Violation of the provisions of this chapter or regulations adopted pursuant thereto.

The proceedings for denial, revocation, or suspension pursuant to this section shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department shall have all of the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 25629 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 25690 (technical amendment). Conduct of proceedings

25690. Every holder of a certificate or a permit issued pursuant to this chapter may be disciplined as provided in this article. The proceedings under this article shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all of the

powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 25690 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 25845 (technical amendment). Hearing; conduct of proceedings

25845. (a) In any proceeding under this chapter for granting or amending any license, or for determining compliance with, or granting exceptions from, rules and regulations promulgated in accordance with this chapter, the department shall afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by the proceeding, and shall admit that person as a party to such proceeding.

(b) Proceedings for the suspension or revocation of licenses under this chapter shall be conducted in accordance with ~~the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

(c) The adoption, repeal, or amendment of rules and regulations pursuant to this chapter shall be accomplished in conformity with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Subdivision (b) of Section 25845 is amended to correct the reference to the adjudication provisions of the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 25847 (technical amendment). Judicial review

25847. Any final order entered in any proceeding under Sections 25845 and 25846 shall be subject to judicial review in the manner prescribed in ~~Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2~~ *Section 660* of the Government Code.

Comment. Section 25847 is amended to correct the reference to the judicial review provisions of the Administrative Procedure Act.

Health & Safety Code § 26582 (technical amendment). Revocation of authorization; proceedings

26582. The department may revoke any authorization made pursuant to this article, if it determines, after a hearing conducted pursuant to ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code *by an administrative law judge employed by the Office of Administrative Hearings*, that the local health department authorized pursuant to this article is not enforcing this

division or the rules and regulations adopted pursuant to this division, or no longer has an adequate staff qualified to do so.

Comment. Section 26582 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 26691 (technical amendment). Denial, suspension, or revocation

26691. Any violation of any provision of this division or any regulation adopted pursuant to this division shall be grounds for denying a license or for suspending or revoking a license. Proceedings for the denial, suspension, or revocation of a license shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all the powers granted in that chapter. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 26691 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 28317 (technical amendment). Revocation or suspension of license

28317. If any licensee fails to maintain his equipment and to cleanse or sterilize any bottle in the manner required by this article, and issues a certificate knowing its contents to be untrue the state department may revoke or suspend his license after a hearing. The proceedings for the revocation or suspension of a license shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the state department shall have all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 28317 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 28418 (technical amendment). Conduct of proceedings

28418. Proceedings for the suspension and revocation of licenses shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code; and the state department has all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 28418 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative

law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 28479 (technical amendment). Issuance, revocation, or suspension of license; conduct of proceedings

28479. On receipt of an application showing that the applicant is properly equipped to package or manufacture olive oil, or is a wholesale distributor of olive oil whose name and address will appear upon olive oil containers as distributor and whose name also will appear upon those containers as the only California addressee, the department shall, free of charge, issue the applicant a license, not transferable, but good until revoked, to package, manufacture, or distribute olive oil as the case may be.

The department may revoke or suspend the license after a hearing. The proceedings for the revocation or suspension of a license shall be in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all the powers granted in that chapter. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 28479 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Health & Safety Code § 28721 (technical amendment). Revocation of license; conduct of proceedings

28721. The department, after notice and hearing, may revoke the license issued for any frozen food locker plant for failure to comply with the provisions of this chapter. The proceedings under this section shall be conducted in accordance with ~~Chapter 5 of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, and the department shall have all the powers granted therein. *The proceedings shall be conducted by an administrative law judge employed by the Office of Administrative Hearings.*

Comment. Section 28721 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Welf. & Inst. Code § 10953 (amended). Conduct of hearing

10953. A hearing under this chapter shall be conducted by administrative law judges employed by the department, unless the director orders that it shall be conducted by himself or herself. However, the director may contract with the Office of Administrative Hearings to conduct hearings.

~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any hearing conducted under this chapter.~~

Comment. Section 10953 is amended to delete the last sentence. The Administrative Procedure Act applies to proceedings under this chapter. Gov't Code § 631.010. However, because hearings under this chapter are not required to be conducted by an administrative law judge employed by the Office of Administrative Hearings (*cf.* Gov't Code § 631.040), the Department of Health Services may provide for hearings using the special hearing procedure under Government Code Sections 633.010-633.050. See Gov't Code §§ 633.010-633.020.

Welf. & Inst. Code § 10964 (amended). Digest of decisions

10964. The department shall compile and distribute to each county department a current digest of decisions *rendered under this chapter, properly designated, and indexed, rendered under this chapter, pursuant to Article 3 (commencing with Section 649.310) of Chapter 9 of Part 4 of Division 3.3 of Title 1 of the Government Code*, and each such digest shall be open to public inspection, subject, however, to the confidentiality requirements set forth in federal and state laws and regulations *and in state statutes*.

Comment. Section 10964 is amended to make the designation of precedent decisions under this chapter subject to the provisions of the Administrative Procedure Act for precedent decisions. These provisions apply both to decisions in formal hearings under the Administrative Procedure Act and to decisions in a special hearing procedure. See Gov't Code § 633.030(h)(requirements of special hearing procedure).

Section 10964 is also amended to delete the former provision permitting state regulations to provide for confidentiality of precedent decisions. Confidentiality must now be provided by federal laws and regulations or by state statute. This is consistent with Government Code Sections 649.330 (index of precedent decisions under APA shall be available to public) and 633.030 (special hearing procedure subject to APA provisions on precedent decisions).

Welf. & Inst. Code § 14087.27 (amended). Review of contract disputes

14087.27. (a) Notwithstanding any other provision of law, judicial review pursuant to Section 1085 of the Code of Civil Procedure, shall be available to resolve disputes relating to the terms, performance, or termination of contracts entered into pursuant to this article, or any act, failure to act, conduct, order, or decision of the special hospital negotiator or the commission which violate the provisions of this article.

(b) Subdivision (a) shall not apply to recoupment efforts based on an audit or review of hospital performance of the terms and conditions of the negotiated contract. These recoupment efforts shall be reviewable pursuant to Section 14171.

(c) As an alternative for a contract hospital, to the remedy provided in subdivision (a), contracts entered into pursuant to this article shall provide for administrative review of disputes relating to performance under the contracts. The proceedings for *administrative* review of the disputes shall be conducted by an independent hearing examiner who shall render a proposed decision *in accordance with Division 3.3 (commencing with Section 600) of Title 1 of the Government Code*. The final decision shall be rendered by the director.

(d) Venue for judicial review pursuant to this section shall lie only in counties in which the Attorney General maintains an office.

Comment. Subdivision (c) of Section 14087.27 is amended to require review under the Administrative Procedure Act if the contract provides for administrative review. The Administrative Procedure Act permits the Department of Health Services to provide for review using the special hearing procedure under Government Code Sections 633.010-633.050. See Gov't Code §§ 633.010-633.020.

Note. The Commission considered Section 14087.27 at the February meeting. The Commission noted that subdivision (a) provides judicial review of disputes about contract negotiation and performance, while subdivision (c) provides administrative review of disputes about contract performance. The Commission wanted administrative review of disputes about performance to be subject to the APA, but not disputes about contract negotiations. That is what these amendments do.

Welf. & Inst. Code § 14123 (amended). Suspension of provider of service

14123. Participation in the Medi-Cal program by a provider of service is subject to suspension in order to protect the health of the recipients and the funds appropriated to carry out this chapter.

(a) The director may suspend a provider of service from further participation under the Medi-Cal program for violation of any provision of this chapter or Chapter 8 (commencing with Section 14200) or any rule or regulation promulgated by the director pursuant to those chapters. Any such suspension may be for an indefinite or specified period of time and with or without conditions or may be imposed with the operation of the suspension stayed or probation granted. The director shall suspend a provider of service for conviction of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service.

If the provider of service is a clinic, group, corporation, or other association, conviction of any officer, director, or shareholder with a 10 percent or greater interest in that organization, of such a crime shall result in the suspension of that organization and the individual convicted if the director believes that suspension would be in the best interest of the Medi-Cal program. If the provider of services is a political subdivision of the state or other government agency, the conviction of the person in charge of the facility of such a crime may result in the suspension of that facility. The record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of the fact that the conviction occurred. A plea or verdict of guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

After conviction but before the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, the director, if he or she believes that suspension would be in the best interests of the Medi-Cal program, may order the suspension of a provider of service. When the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence irrespective of any subsequent order under Section 1203.4 of the Penal Code allowing a person to

withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment, the director shall order the suspension of a provider of service. The suspension shall not take effect earlier than the date of the director's order. Suspension following a conviction is not subject to the proceedings required in subdivision (c). However, the director may grant an informal hearing at the request of the provider of service to determine in the director's sole discretion if the circumstances surrounding the conviction justify rescinding or otherwise modifying the suspension provided for in this subdivision.

If the provider of service appeals the conviction and the conviction is reversed, the provider may apply for reinstatement to the Medi-Cal program after the conviction is reversed. Notwithstanding Section 14126.6, the application for reinstatement shall not be subject to the one-year waiting period for the filing of a reinstatement petition pursuant to Section 11522 of the Government Code.

(b) Whenever the director receives written notification from the Secretary of the United States Department of Health and Human Services, that a physician or other individual practitioner has been suspended from participation in the Medicare or Medicaid programs, the director shall, promptly suspend the practitioner from participation in the Medi-Cal program. This automatic suspension is not subject to the proceedings required in subdivision (c). No payment from state or federal funds may be made for any item or service rendered by the practitioner during the period of suspension.

(c) The proceedings for suspension shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Division 3.3 (commencing with Section 600) of Title 1* of the Government Code, ~~except that hearings.~~ *Hearings* may be conducted by departmental hearing officers appointed by the director. The director may periodically subcontract with the Office of Administrative Hearings to conduct the hearings. The director may temporarily suspend any provider of service prior to any hearing when in his or her opinion that action is necessary to protect the public welfare or the interests of the Medi-Cal program. The director shall notify the provider of service of the temporary suspension and the effective date thereof and at the same time serve the provider with an accusation. The accusation and all proceedings thereafter shall be in accordance with the sections of the Government Code specified in this subdivision. Upon receipt of a notice of defense by the provider, the director shall set the matter for hearing within 30 days after receipt of the notice. The temporary suspension shall remain in effect until such time as the hearing is completed and the director has made a final determination on the merits. The temporary suspension shall, however, be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed. This subdivision does not apply where the suspension of a provider is based upon the conviction of any crime involving fraud, abuse of the Medi-Cal

program, or suspension from the federal Medicare program. In those instances, suspension shall be automatic.

(d) The suspension by the director of any provider of service shall preclude the provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation, or other association to the Medi-Cal program for any services or supplies the provider has provided under the program, except for services or supplies provided prior to the suspension. No clinic, group, corporation, or other association which is a provider of service shall submit claims for payment to the Medi-Cal program for any services or supplies provided by a person within the organization who has been suspended or revoked by the director, except for services or supplies provided prior to the suspension.

Where the provisions of this chapter or Chapter 8 (commencing with Section 14200) or the regulations promulgated by the director are violated by a provider of service which is a clinic, group, corporation, or other association, the director may suspend the organization and any individual person within the organization who is responsible for the violation.

(e) Notice of the suspension shall be sent by the director to the provider's state licensing, certifying, or registering authority, along with the evidence upon which the suspension was based.

Comment. Subdivision (c) of Section 14123 is amended to correct the reference to the Administrative Procedure Act. The Department of Health Services may adopt a special hearing procedure under the act. See Gov't Code § 633.010-633.020.

Welf. & Inst. Code § 14171 (technical amendment). Administrative appeal

14171. (a) The director shall establish administrative appeal processes to review grievances or complaints arising from the findings of an audit or examination made pursuant to Sections 10722 and 14170.

(b) Different administrative appeal processes may be established by the director for grievances or complaints arising from the determinations of a tentative or final settlement based on audit or examination findings made by or on behalf of the department pursuant to Sections 10722 and 14170, except that consistent with existing practice, no administrative appeal shall be available for tentative settlement of cost reports.

(c) The administrative appeal process established by the director for final settlements, including, in the case of hospitals, the application of Sections 51536, 51537, and 51539 of Title 22 of the California Code of Regulations shall include the procedural requirements of ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2~~ *Part 4 (commencing with Section 641.110) of Division 3.3 of Title 1* of the Government Code. The impartial hearing shall be conducted by an administrative law judge appointed by the director. The director may subcontract with the Office of Administrative Hearings to conduct hearings on cases involving complicated issues of fact or law, or to reduce the backlog of cases.

(d) The administrative appeal process established by the director for tentative settlements, including, in the case of hospitals, the application of Sections 51536, 51537, and 51539 of Title 22 of the California Code of Regulations shall be an informal process which, however, guarantees a provider the right to present any grievance or complaint to the department in writing. Any subsequent hearings shall be conducted in an informal manner and shall be held at the discretion of the department.

(e) The time limitations in subdivisions (f) and (g) for the impartial hearing and the final decisions are mandatory. If the department fails to conduct the hearing or to adopt a final decision thereon within the time limitations provided in subdivisions (f) and (g), the amount of any overpayment which is ultimately determined by the department to be due shall be reduced by 10 percent for each 30-day period, or portion thereof, that the hearing or the decision, or both, are delayed beyond the time limitations provided in subdivisions (f) and (g). However, the time period shall be extended by either of the following:

(1) Delay caused by a provider.

(2) Extensions of time granted a provider at its sole request or at the joint request of the provider and the department.

(f)(1) Notwithstanding subdivision (c), the administrative appeal process established by the director shall commence with an informal conference with the provider, a representative of the department, and the administrative law judge. The informal conference shall be conducted no later than 90 days after the filing of a timely and specific statement of disputed issues by the provider. The administrative law judge, when appropriate, may assign the administrative appeal to an informal level of review where efforts could be made to resolve facts and issues in dispute in a fair and equitable manner, subject to the requirements of state and federal law. The review conducted at this informal level shall be completed no later than 180 days after the filing of a timely and specific statement of disputed issues by the provider.

(2) Nothing in this subdivision shall prohibit the provider from presenting any unresolved grievances or complaints at an impartial hearing pursuant to subdivision (c). The impartial hearing shall be conducted no later than 300 days after the filing of a timely and specific statement of disputed issues by the provider. For noninstitutional providers, a proposed decision shall be prepared and transmitted to the director and the parties within 60 days after the closure of the record of the impartial hearing. For institutional providers, a proposed decision shall be prepared and transmitted to the director and the parties within 180 days after the closure of the record of the impartial hearing.

(3) Subject to subdivision (g), a final decision in a noninstitutional provider appeal shall be adopted within 180 days after the closure of the record of the impartial hearing, and a final decision in an institutional provider appeal shall be adopted within 300 days after the closure of the record of the impartial hearing.

(g) In the event the director intends to modify a proposed decision, on or before the 180th day following the closure of the record of the hearing for noninstitutional providers or the 300th day following the closure of the record of the hearing for institutional providers, the director shall provide written notice of his or her intention to the parties and shall afford the parties an opportunity to present oral and written argument. Following this notice, on or before the 240th day following the closure of the record of the hearing for noninstitutional providers or the 420th day following closure of the record of the hearing for institutional providers, or within that additional time period as is granted pursuant to the sole request of a provider or at the joint request of the provider and the department, the director shall issue a modified decision.

(h) In the event recovery of a disallowed payment has been made by the department, a provider who prevails in an appeal of a disallowed payment shall be entitled to interest at the rate equal to the monthly average received on investments in the Surplus Money Investment Fund, commencing on the date the appeal is formally accepted by the department or the date payment is received by the department, whichever is later.

(i) Except as provided in subdivision (j), commencing 60 days after issuance of the first statement of account status or demand for repayment resulting from an audit or examination made pursuant to Sections 10722 and 14170, interest at the rate equal to the monthly average received on investments in the Surplus Money Investment Fund during the month the first statement of account status or demand for repayment was issued shall be assessed against any unrecovered overpayment due to the department.

(j)(1) Commencing on the day following the last day of the period covered by an audit or examination made pursuant to Sections 10722 and 14170, interest at the rate established under Section 19269 of the Revenue and Taxation Code which is in effect on the date of the commencement of that interest shall be assessed against any unrecovered overpayment due to the department by providers of durable medical equipment or incontinence supplies.

(2) Interest which accrues under this subdivision for recoupment of an overpayment based on the lack of medical necessity for a previously approved claim shall commence to accrue on the date of written demand by the department.

(k) The final decision of the director shall be reviewable in accordance with Section 1094.5 of the Code of Civil Procedure within six months of the issuance of the director's final decision.

Comment. Subdivision (c) of Section 14171 is amended to correct the reference to the Administrative Procedure Act. The Department of Health Services may adopt a special hearing procedure under the act. See Gov't Code § 633.010-633.020.

Welf. & Inst. Code § 14300 (amended). Notice of intent to contract; request for hearing

14300. The department shall publish a notice of intent to contract at least 60 days prior to the effective date of any initial or renewed contract. The notice shall

appear in local newspapers circulated in the service areas of the prepaid health plan. The notice shall announce the department's intent to contract and any person affected by the contract shall have the opportunity to request that a public hearing be held. The request for public hearing shall be accompanied by an explanation of the reason for the request and a description of problems or questions regarding the plan's ability to meet its contractual obligations. A hearing shall be held by the department if the director determines that the request is reasonable and warrants a full public hearing. A request shall be considered reasonable if there is a question regarding the plan's ability to meet its contractual obligations. *The hearing shall be conducted in accordance with Division 3.3 (commencing with Section 600) of Title 1 of the Government Code.*

No contract shall be signed by the department until the department determines that the plan has the ability to fully comply with its contractual obligations.

Comment. Section 14300 is amended to make hearings under the section subject to the Administrative Procedure Act. Since the hearing need not be conducted by an administrative law judge from the Office of Administrative Hearings, the Department of Health Services may by regulation adopt a special hearing procedure for hearings under this section. Gov't Code §§ 633.010-633.020.

Welf. & Inst. Code § 14304 (technical amendment). Termination of contract or sanctions for noncompliance

14304. (a) The director shall terminate a contract with a prepaid health plan if he or she finds that the standards prescribed in this chapter, the regulations, or the contract are not being complied with, that claims accrued or to accrue have not or will not be recompensed, or for other good cause shown. Except in the event that the director determines there is an immediate threat to the health of Medi-Cal beneficiaries enrolled in the plan, the Office of Administrative Hearings, at the request of the plan, shall hold a public hearing to commence 30 days after notice of intent to terminate the contract has been received by the plan. The department shall present evidence at the hearing showing good cause for the termination. The Office of Administrative Hearings shall provide its written recommendation to the department on the termination of the contract within 30 days after conclusion of the hearing. Reasonable notice of the hearing shall be given to the prepaid health plan, to Medi-Cal beneficiaries enrolled in the plan, and others who may be directly interested, including such other persons and organizations as the director may deem necessary. The notice shall state the effective date of, and the reason for, the termination.

(b) In lieu of contract termination specified in subdivision (a), the director shall have the power and authority to take one or more of the following sanctions against a contractor for noncompliance with the standards prescribed in this chapter, the regulations or the contract:

- (1) Suspend enrollment and marketing activities.
- (2) Require the contractor to suspend or terminate contractor personnel or subcontractors.

(3) Impose civil penalties not to exceed five thousand dollars (\$5,000) per violation pursuant to regulations adopted by the director.

The director shall give reasonable notice of his or her intention to apply any of the sanctions authorized by this subdivision to the prepaid health plan and others who may be directly interested, including such other persons and organizations as the director may deem necessary. The notice shall include the effective date, the duration of, and the reason for each sanction proposed by the director.

(c) Notwithstanding subdivision (b), the director shall terminate a contract with a prepaid health plan which the United States Secretary of Health and Human Services has determined does not meet the requirements for participation in the Medicaid Program (Title XIX of the Social Security Act).

(d) Proceedings to impose the sanctions in subdivision (b) shall be governed by ~~the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 conducted in accordance with Division 3.3 (commencing with Section 600) of the Government Code by an administrative law judge employed by the Office of Administrative Hearings.~~ The director may collect civil penalties by withholding the amount from capitation owed to the plan.

Proceedings to terminate a prepaid health plan contract under subdivisions (a) and (c) shall be governed by the provisions of subdivision (a).

Comment. Section 14304 is amended to correct the reference to the Administrative Procedure Act, and to continue the existing requirement that the hearing be conducted by an administrative law judge employed by the Office of Administrative Hearings. See former Gov't Code §§ 11501-11502.

Welf. & Inst. Code § 14454 (technical amendment). Emergency services; submission of claims disputes to director for determination

14454. (a) The prepaid health plan shall be liable for all in-area and out-of-area emergency services which are required by the contract and rendered by a nonprepaid health plan provider. Payment for such services shall include treatment of emergency conditions and shall continue until such time as the enrollee may be transferred to any provider of the prepaid health plan.

(b) Where a dispute arises between the prepaid health plan and the nonprepaid health plan provider as to the liability of the prepaid health plan for such services, the nonprepaid health plan provider may submit the matter to the director for determination in the form of a claim documenting as fully as reasonably possible the nature of the emergency, the necessity for the treatment rendered, the appropriateness of the length of stay for inpatient care, the reason the patient could not have been transferred to a provider of the prepaid health plan, and including any response by the prepaid health plan to the claim which resulted in the dispute. The director shall, by regulation, provide for resolution of the dispute in a timely fashion ~~and in a manner guaranteeing the procedural due process requirements of the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 using a special hearing procedure under Division 3.3 (commencing with Section 600) of the Government Code, except that the~~ . The department shall use

its own hearing officers. The hearing officer may be assisted by a physician. To the extent feasible, the director shall consolidate the claims of the nonprepaid health plan provider against the prepaid health plan.

In no event, shall the prepaid health plan or the nonprepaid health plan provider bill the enrollee for services which are or have been subject of review by the director pursuant to this section.

(c) If the director determines that the prepaid health plan is liable for the emergency service, the plan shall reimburse the nonprepaid health plan provider within 30 days. If the prepaid health plan fails to reimburse the nonprepaid health plan provider within 30 days, the director shall arrange to set off the amount of the unpaid claim or claims from no fewer than two future capitation payments owed to the prepaid health plan by the department and the department shall forward such setoff or setoffs to the nonprepaid health plan provider. In making such arrangements to set off, the director shall consult with the affected prepaid health plan in an attempt to minimize the impact of such setoff or setoffs on cash flow. When the claim of the nonprepaid health plan provider is satisfied by setoff or setoffs, the director shall satisfy the claim only with the funds of the prepaid health plan and shall in no event use state funds to satisfy such a claim.

(d) Nothing in this section shall preclude prepaid health plans and nonprepaid health plan providers from entering into voluntary agreements to settle disputed claims for services by means of binding arbitration or by other means acceptable to both parties.

Comment. Section 14454 is amended to correct the reference to the Administrative Procedure Act, and to require the director to use the special hearing procedure under the act. See Gov't Code §§ 633.010-633.050.